

JOHN R. GREEN
Acting United States Attorney
NICHOLAS VASSALLO
Assistant United States Attorney
District of Wyoming
P.O. Box 668
Cheyenne, Wyoming 82003

MICHAEL G. PITMAN (*Pro Hac Vice*)
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone (202) 305-7938
Facsimile (202) 307-0054

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

United States of America,

Plaintiff,

v.

Civil No. 2:07-cv-19-CAB

Jane Joyce Rice; Water Garden, Inc.;
Perpetual Legacy Corp.; Carte Blanche
Trust; & Newport Pacific Trust Co.,
Ltd.;

Defendants.

**UNITED STATES' MOTION FOR ENTRY OF DEFAULT JUDGMENT
AGAINST DEFENDANT NEWPORT PACIFIC TRUST CO., LTD.**

The United States, by its undersigned counsel, pursuant to Fed. R. Civ. P.

55(b), hereby moves this Court to enter default judgment against Defendant Newport Pacific Trust Co., Ltd. ("Newport Pacific") because it has failed to appear and file a responsive pleading in this action.

BACKGROUND

The United States commenced this action on January 19, 2007, *see* Doc. # 1, and service of process upon Newport Pacific was completed by publication on June 13, 2007. *See* Docs. # 21 & 32. Consequently, Newport Pacific was required to appear and/or otherwise plead in this action no later than July 5, 2007. *See* Fed. R. Civ. P. 12(a)(1)(A); Doc. # 32. To date, Newport Pacific has not filed an answer or otherwise responded to the Complaint, or appeared in any other manner before the Court in this matter. *See generally* Civil Docket for Case # 2:07-cv-19-CAB. The clerk of court entered default against Newport Pacific on August 13, 2007. *See* Doc. # 40.

ARGUMENT

Fed. R. Civ. P. 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend," the party may be defaulted. Once such a default occurs, a party seeking affirmative relief may move for default judgment. *See* Fed. R. Civ. P. 55(b). The entry of default judgment is committed to the District Court's sound discretion. *See, e.g., Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1124 (10th Cir. 2003).

Here, the entry of default judgment against Newport Pacific is justified in light of its failure to appear and plead. The Complaint seeks to reduce to judgment federal income tax assessments made against Defendant Jane Joyce Rice, and to foreclose on her property. Newport Pacific was named as a defendant solely to satisfy 26 U.S.C. § 7403(b)'s requirement that "[a]ll persons . . . claiming any interest in the property involved in [an action to enforce a tax lien] shall be made parties thereto." Newport Pacific's potential interest in property involved in this matter arises out of the transfer of \$240,975 for the benefit of Defendant Jane Joyce Rice to an account held by Newport Pacific at the LGT Bank in Liechtenstein on June 18, 2004. As noted in the United States' Motion for Service by Publication, filed on May 7, 2007 (Doc. # 19), Newport Pacific bears all the hallmarks of a fictitious entity. Nevertheless, Newport Pacific was named as a defendant out of an abundance of caution in case it claimed an interest in the afore mentioned \$240,975, or any other property described in the Complaint which is the subject of this action. Newport Pacific has failed to appear or otherwise defend, or to claim, an interest in any property whatsoever.

CONCLUSION

Newport Pacific has failed to make any appearance in this matter to claim or defend any interest in any property whatsoever, despite the fact that the clerk of court has entered default against it. As such, the United States respectfully

requests that this Court grant its motion for entry of default judgment against Newport Pacific.

JOHN R. GREEN
Acting United States Attorney
NICHOLAS VASSALLO
Assistant United States Attorney
District of Wyoming
P.O. Box 668
Cheyenne, Wyoming 82003
Telephone: (307) 772-2124

Dated: August 30, 2007

s/ Michael G. Pitman
MICHAEL G. PITMAN (*Pro Hac Vice*)
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 305-7938
Facsimile: (202) 307-0054
Michael.G.Pitman@USDOJ.gov